

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER****UNDER REGULATION 13 (4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST VIJAY KUMAR PATNI, MEMBER CALCUTTA STOCK EXCHANGE.****CO\ 94\SMD\08\ 2003**

1.0 Vijay Kumar Patni (hereinafter referred to as "the Member") is a Member of Calcutta Stock Exchange (CSE), with a SEBI Reg. No. . INB 031078216. and has his office at 506, Vaishno Chambers, 6, Brabourne Road, Kolkatta – 700 001.

1.1 Based on inspection report dated 15th July 2002 submitted to the Board by the inspection authority, an Enquiry Officer was appointed vide order dated 16th September 2002 to enquire into the following violations by the Member:

(i) CSE's notice dated 16th September 1999 and CSE's Bye-laws 332 and 334 (iii)

(ii) Regulation 4 (b) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 1995 (hereinafter referred to as "FUTP Regulations").

(iii) Rule 4 (b) of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Rules, 1992 (hereinafter referred to as "Broker Rules") and regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as "Broker Regulations") read with Clauses A (1, 4 and 5) of Code of conduct stipulated in Schedule II of Broker Regulations.

(iv) Rule 8 (1) (f) of Securities Contracts (Regulation) Rules, 1957

2.0 The Enquiry Officer submitted his report on 28.03.2003. He found that the member had done off-the-floor transactions with Sanjay Khemani in the scrips of Himachal Futuristic Communications Limited (HFCL) and Global Telesystems Limited (GTL). Member had done off-the-floor transactions in HFCL and GTL scrips with Ashok Poddar. Details of transactions with both the above members are as follows:

Transactions with Sanjay Khemani**Name of the scrip of HFCL****Settlement no 2001141S**

Purchased by the member				Sold by the member			
Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
08.01.01	B	175100	1222.40	05.01.01	S	175100	1360.50
Amount receivable for Sanjay Khemani as per difference bill				Rs. 2, 41, 81, 310 /-			

Settlement No. 2001142S

Purchased by the member				Sold by the member			
Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
16.01.01	B	85000	1105.30	12.01.01	S	15000	1195.70
16.01.01	B	50000	1125.30	12.01.01	S	50000	1200.70
17.01.01	B	19900	1110.30	12.01.01	S	74900	1210.50
17.01.01	B	75000	1130.20	12.01.01	S	50000	1210.70
				15.01.01	S	40000	1195.60
Amount receivable for Sanjay Khemani as per difference bill				Rs.1, 99, 20, 480/-			

Name of Scrip GTL**Settlement No. 2001142S**

Purchased by the member				Sold by the member			
Date	Buy/Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
17.01.01	B	50000	640.50	12.01.01	S	50000	705.10
17.01.01	B	75000	642.50	12.01.01	S	20000	730.40
18.01.01	B	20000	655.20	12.01.01	S	75000	735.80
Amount receivable for Sanjay Khemani as per difference bill				Rs.1, 17, 31, 500/-			

Name of Scrip GTL**Settlement No. 2001143S**

Purchased by the member				Sold by the member			
Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
22.01.01	B	186300	736.20	24.01.01	S	785.20	186300
Amount receivable for Sanjay Khemani as per difference bill					Rs.91, 28, 700/-		

Name of Scrip HFCL

Settlement No. 2001144S

Purchased by the member				Sold by the member			
Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
01.02.01	B	130000	1068.30	29.01.01	S	130000	1264.70
Amount receivable for Sanjay Khemani as per difference bill					Rs. 2, 55, 32, 000/-		

Name of Scrip HFCL

Settlement No. 2001145S

Purchased by the member				Sold by the member			
Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
01.02.01	B	130000	1068.30	29.01.01	S	130000	1264.70
Amount receivable for Sanjay Khemani as per difference bill					Rs. 1, 49, 55, 600/-		

Name of scrip HFCL

Settlement No. 2001148S

Purchased by the member				Sold by the member			
Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
02.02.01	B	242000	1017.50	02.02.01	S	242000	1079.50
Amount receivable for Sanjay Khemani as per difference bill					Rs.1, 49, 55, 600/-		

Transactions with Ashok Kumar Poddar

Name of Scrip HFCL

Settlement No. 2001145S

Purchased by the member				Sold by the member			
Date	Buy/Sell	Qty	Rate (Rs.)	Date	Buy/Sell	Qty	Rate (Rs.)
07.02.01	B	94000	947.50	07.02.01	S	94000	1005.20
Amount receivable for A K Poddar as per difference bill					Rs. 54, 23, 800/-		

Name of Scrip HFCL

Settlement No. 2001148S

Purchased by the member				Sold by the member			
Date	Buy/Sell	Qty	Rate (Rs.)	Date	Buy/ Sell	Qty	Rate (Rs.)
26.02.01	B	105380	681.00	26.02.01	S	105380	733.20
Amount receivable for A K Poddar as per difference bill					Rs. 55, 00, 836/-		

2.1 The enquiry officer in his report recommended a penalty of suspension of registration of the member for a period of four months.

3.0 After considering the enquiry report, a show cause notice dated 23.04.2003 under regulation 13 (2) of the said Regulations was issued to the member informing him of the enquiry officer's finding and requiring him to show cause as to why action should not be taken against him as recommended by enquiry officer. A copy of enquiry report was also annexed to the said show cause notice. It was also stated in the said show cause notice that if the member desired a personal hearing before the Chairman the same should be indicated in his reply.

3.1 The above show cause notice was delivered to the member on 29th April, 2003. Member did not respond to the above mentioned show cause notice. Since, appropriate opportunity was given to the member, I am of the view that the principals of natural justice have been complied with and matter has to be proceeded further in the interest of justice.

3.2 I note that the member before the enquiry officer submitted that non-reporting of off-the-floor transactions was due to non-awareness of the relevant regulations and prevailing market customs. This was purely technical mistake and that his actions did not put anyone to loss nor did someone gain out of it.

3.3 With regard to violation of FUTP Regulations, the member submitted that he had not concealed any trading volume, off-the-floor transactions were not done with any malafide intention to deceive any party hence question of market manipulation does not arise.

3.4 With regard to violation of Rule 4 (b) of Brokers Rules read with Code of Conduct of Broker Regulations, the member submitted that the off-the market deals were not done between two clients and all the trades were executed in self account hence don't fall under the definition of negotiated deals.

3.5 With regard to violation of Rule 8(1)(f) of Securities Contracts (Regulation) Rules 1957, member submitted that he had not undertaken any fund based activities, it was normal practice and courtesy amongst CSE brokers to accommodate each other in the time of need and this was being carried out without any intention of making extra gains. The funds taken were in order to meet his regular business requirement and the said amount was returned on subsequent availability of funds.

4.0 I find that the member has admittedly indulged in off the floor transactions in the scrips of HFCL, Global Tele with other members viz. Sanjay Khemani, Ashok Kumar Poddar as detailed in above paragraphs.

SEBI vide its circular no. SMDRP / POLICY/ Cir-32/ 1999 dated 14.09.1999 banned all negotiated deals, cross deals etc. which include Off-the-floor transactions also. In the said circular it had been notified that all negotiated deals shall be permitted only if the said deals are executed on the screens of the Exchange. The price and order match mechanism of the Exchange like any other normal trade.

The said decision was taken as negotiated deals are devoid of transparency requirements. They also do not contribute to price discovery at the stock exchange depriving the investors of the benefit of best price. Therefore, such deals militate against basic principals of stock exchange mechanism which is meant to bring large number of buyers and sellers together in a transparent manner. It is apparent from the above that the off the floor transactions as shown in para above was not put in the system of the Exchange by the member. Therefore, this is violative of SEBI Circular dated 14.09.1999. This kind of off the floor transactions tamper with price discovery mechanism of the exchange and such trading leads to interference with the fair and smooth functioning of the market. Such deals are also in violation of item 5 of clause A of Code of Conduct read with regulation 7 of Broker Regulations.

4.1 Regulation 7 of SEBI (Stock Broker and Sub Brokers) Regulations, 1992 reads as under :

"7. The stock broker holding certificate shall at all times abide by the Code of Conduct as specified in schedule II."

The relevant portions of clause A of Schedule II mentioned above reads as under :

Item 5 : Compliance With Statutory Requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him."

Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 read as under :

"4. The Board may grant a certificate to a stock broker subject to the following conditions namely:

a...

b. He shall abide by the rules, regulations and bye laws of the stock exchange or stock exchanges of which he is a member."

As can be seen from above, the member has violated item 5 of Clause A of Schedule II since he failed to comply with Circular dated 14.09.1999.

4.2 Off-the-floor transactions tamper with price discovery mechanism of the exchange and such trading leads to interference with the fair and smooth functioning of the market. Non-reporting is in violation of item 5 of clause A of Code of Conduct read with regulation 7 of Broker Regulations. Not being aware of SEBI circular is no excuse as a market intermediary has the responsibility to keep himself abreast of law. Member's submission that he had done off-the-floor transactions out of business necessity and not with a malafide intention is devoid of any force and is not acceptable.

4.3 In view of the above, I find that the Member is guilty of violating Rule 4 (b) of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Rules, 1992 and regulation 7 of Broker Regulations read with Clauses A (5) of Code of conduct stipulated in Schedule II of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992.

5.1 The enquiry report had also brought out the instances where the member had made payments from client ledger and received funds from the other members of CSE but were not backed by transactions.

Following are the instances as mentioned above :

Date	Name of the member	Paid/received	Amount (Rs.)
29.09.2000	Sanjay Khemani	Received	1,50,00,000.00
13.12.2000	Sanjay Khemani	Paid	1,60,00,000.00
01.01.2001	Sanjay Khemani	Received	2,06,00,000.00
10.01.2001	Sanjay Khemani	Paid	34,00,000.00
29.09.2000	Ashok Kumar Poddar	Received	20,50,000.00
06.12.2000	Ashok Kumar Poddar	Paid	12,00,000.00
29.12.2000	Ashok Kumar Poddar	Received	57,00,000.00

12.02.2001	Ashok Kumar Poddar	Paid	49,00,000.00
27.07.2000	Dinesh Kumar Singhania & Co	Received	14,00,000.00
04.08.2000	Dinesh Kumar Singhania & Co	Received	18,00,000.00
24.08.2000	Dinesh Kumar Singhania & Co	Paid	18,00,000.00
09.09.2000	Dinesh Kumar Singhania & Co	Paid	32,00,000.00

5.2 Giving money as loan to other broker from the account of the client is in violation of byelaws of the exchange and SEBI circular no. SMD\SED\Cir\93\23321 dated 18th November 1993. It has been mandated in the said circular that a broker cannot use money of the client for any other purpose and the same has to be kept segregated only for his transactions. The member has thus violated the above mentioned circular and failed to be fair to his clients as required under items (6) of clause B of Schedule II read with regulation 7 of the Broker Regulations. The member has also entered into money lending transactions which is in violation of rule 8(1)(f) of SC(R) Rules of loan transactions like a professional lender of money.

5.3 Rule 8(1) of SC (R) Rules reads as under:

“ 8. Qualifications

The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(1) No person shall be eligible to be elected as a member if -

(a)

(b);

(c)

(d)

(e).....

(f) he is engaged as principal or employee in any business other than that of securities except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business:

Provided that the *Securities and Exchange Board of India* may, for reasons sufficient in the opinion of the said *Board*, permit a recognised stock exchange to suspend the enforcement of this clause for a specified period on condition that the applicant is not associated with or is a member of or subscriber to or shareholder or debenture holder in or connected through a partner or employee with any other organisation, institution, association, company or corporation in India where forward business of any kind whether in goods or commodities or otherwise is carried on or is not engaged as a principal or employee in any such business;”

6.0 In view of the above, I find that the member by indulging in the off the floor transactions has violated Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 and Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations 1992 and Clause A 5 of the Code of Conduct stipulated in Schedule II of SEBI (Stock Brokers and Sub Brokers) Regulations. By indulging in finance transactions as narrated above the member has violated Rule 8(1)(f) of SC (R) Rules, 1957.

6.1 As a registered market intermediary, the member is under obligation to abide by the Code of Conduct. Conforming to the Code of Conduct is a condition precedent for continuation of his registration. The misconduct of the member, therefore, warrants imposition of a penalty in terms of regulation 13 (1) (b) of the Securities and Exchange Board of India (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002.

6.2 Therefore, in the interest of the securities market and in exercise of the powers conferred upon me under sub-section (3) of Section 4 of the SEBI Act, 1992 read with sub-regulation (4) of regulation 13 of the Securities and Exchange Board of India (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002, I hereby order that the registration of Vijay Kumar Patni, (SEBI Reg No INB031078216) Member, Calcutta Stock Exchange, be suspended for a period of four months.

6.3 This order shall come into effect after expiry of three weeks from the date of this order.

DATE: 12th August, 03

PLACE: MUMBAI

GN BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA